

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOREAN BARRERA, On Behalf of  
Herself and All Others Similarly  
Situated,

**Plaintiff,**

V.

PHARMAVITE, LLC, a California  
limited liability company

Defendant.

CASE NO. 2:11-cv-04153-CAS (AGrx)  
CLASS ACTION

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

18 Plaintiff Lorean Barrera and Defendant Pharmavite LLC (collectively, the  
19 “Parties”) have entered into a Settlement Agreement and General Release  
20 (“Settlement Agreement”)<sup>1</sup> to settle this Litigation and the Named Plaintiff has  
21 filed an Unopposed Motion for Entry of Preliminary Approval of Settlement, an  
22 Amendment to Plaintiff’s Unopposed Motion for Entry of Preliminary Approval of  
23 Settlement, a Memorandum in Support of Unopposed Motion for Preliminary  
24 Approval of Settlement and a Supplemental Memorandum in Support of  
25 Unopposed Motion for Preliminary Approval of Settlement (collectively, “Motion

26       <sup>1</sup> All references in the moving papers and related exhibits to “Settlement  
27       Agreement” refer to Exhibit 2 to the Supplemental Declaration of Patricia N.  
28       Syverson, which defines Settlement Agreement to mean Amended Settlement  
      Agreement and Release.

1 for Preliminary Approval"). The Settlement Agreement, the exhibits thereto, and  
 2 the exhibits to the Motion for Preliminary Approval, set forth the terms and  
 3 conditions for a proposed settlement and dismissal with prejudice of this  
 4 Litigation.

5 Having reviewed the Settlement Agreement and its exhibits, the  
 6 Motion for Preliminary Approval, the pleadings and other papers on file in this  
 7 action, and statements of counsel, the Court finds that the Motion for Preliminary  
 8 Approval should be GRANTED and that this Preliminary Approval Order should have  
 9 be entered. Terms and phrases used in this Preliminary Approval Order shall have  
 10 the same meaning ascribed to them in the Settlement Agreement.

11 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

12 1. The Court preliminarily approves the Settlement Agreement subject to  
 13 the Fairness Hearing for purposes of deciding whether to grant final approval to the  
 14 Settlement.

15 2. For settlement purposes only, the Court conditionally certifies the  
 16 following Settlement Class:

17 All residents of the United States who purchased for personal use, and not  
 18 resale or distribution, a Covered Product between May 1, 2007 and the  
 19 Preliminary Approval Date.

20 Specifically excluded from the Settlement Class are the following persons:

- 21 (i) Pharmavite and its respective affiliates, employees, officers, directors,  
 agents, and representatives, and their immediate family members;
- 22 (ii) Settlement Class Counsel and partners, attorneys, and employees of  
 their law firms; and
- 23 (iii) The judges who have presided over the Litigation or mediated the  
 Settlement, and their immediate family members.

24 3. For settlement purposes only, the Court appoints the following  
 25 attorneys to act as Lead Settlement Class Counsel:

26 Elaine A. Ryan  
 27 BONNETT, FAIRBOURN,  
 28 FRIEDMAN & BALINT, P.C.

Stewart M. Weltman  
 SIPRUT, PC  
 17 North State Street, Suite 1600

1                   2325 East Camelback Road, Suite           Chicago, Illinois 60602  
 2                   300   Telephone: (312) 236-0000  
 3                   Phoenix, Arizona 85016  
 4                   Telephone: (602) 274-1100

5                   4. For settlement purposes only, the Court appoints the following  
 6                   attorneys as Settlement Class Counsel:

<p>7                   Elaine A. Ryan    8                   BONNETT, FAIRBOURN, FRIEDMAN    9                   &amp; BALINT, P.C.    10                  2325 East Camelback Road, Suite 300    11                  Phoenix, Arizona 85016    12                  Telephone: (602) 274-1100</p>	<p>7                   Stewart M. Weltman    8                   SIPRUT, PC    9                   17 N. State Street    10                  Suite 1600    11                  Chicago, Illinois 60602    12                  Telephone: (312) 236-0000</p>
<p>13                  Max A. Stein    14                  BOODELL &amp; DOMANSKIS, LLC    15                  One North Franklin, Suite 1200    16                  Chicago, IL 60606    17                  Telephone: (312) 938-1670</p>	<p>13                  Howard J. Sedran    14                  LEVIN FISHBEIN SEDRAN &amp; BERMAN    15                  510 Walnut Street    16                  Philadelphia, Pennsylvania 19106    17                  hsedran@lfsblaw.com    18                  Telephone: (215) 592-1500</p>
<p>19                  WESTERMAN LAW CORP.    20                  Jeff S. Westerman (94559)    21                  1875 Century Park East, Suite 2200    22                  Los Angeles, CA 90067    23                  Tel: (310) 698-7880</p>	

24                  5. For settlement purposes only, the Court appoints the Named Plaintiff  
 25                  as representative of the Settlement Class.

26                  6. The Court finds that the proposed settlement is sufficiently fair,  
 27                  reasonable, and adequate to warrant providing notice to the Settlement Class. This  
 28                  determination permitting notice to the Settlement Class is not a final finding, but a  
 29                  determination that there is probable cause to submit the proposed Settlement

1 Agreement to the Settlement Class and to hold a Fairness Hearing to consider the  
2 fairness, reasonableness, and adequacy of the proposed settlement.

3 7. The Court schedules a Fairness Hearing on final approval of the  
4 Settlement Agreement to consider the fairness, reasonableness and adequacy of the  
5 proposed settlement and whether it should be finally approved by the Court, such  
6 Fairness Hearing to take place on December 4, 2017, at 10:00 a.m.

7 8. The Court appoints KCC Class Action Services as Settlement  
8 Administrator in accordance with Section III Paragraph C of the Settlement  
9 Agreement.

10 9. The Court approves the Class Notice, Exhibits G and H to the  
11 Settlement Agreement, and directs the Settlement Administrator to publish the  
12 Class Notice in accordance with the Settlement Class Notice Program provided for  
13 in the Declaration of Daniel Rosenthal.

14 10. The Court finds the Settlement Class Notice Program implemented  
15 pursuant to the Settlement Agreement (i) is the best practicable notice, (ii) is  
16 reasonably calculated, under the circumstances, to apprise the Settlement Class of  
17 the pendency of the Litigation and of their right to object to or to exclude  
18 themselves from the proposed settlement, (iii) is reasonable and constitutes due,  
19 adequate, and sufficient notice to all persons entitled to receive notice, and  
20 (iv) meets all requirements of applicable law.

21 11. The Court orders the Settlement Administrator to file proof of  
22 compliance with the Settlement Class Notice Program at or before the Fairness  
23 Hearing.

24 12. The Court approves the Claim Form, Exhibit A to the Settlement  
25 Agreement, and directs that the Claim Form be available for request (either by  
26 letter or telephone) from the Settlement Administrator and downloadable from the  
27 Settlement Website.

28

1           13. The Court orders that any Settlement Class Member who wishes to  
2 request benefits under the settlement must sign and return a complete and timely  
3 Claim Form in compliance with the process set forth in the Settlement Agreement  
4 no later than November 13, 2017. Any Settlement Class Member who does not  
5 submit a complete and timely Claim Form in compliance with the Settlement  
6 Agreement shall not be entitled to any benefits under the settlement, but, unless  
7 they opt out, nonetheless shall be barred by the Release and provisions of the  
8 Settlement Agreement and the Final Order and Judgment.

9           14. The Court approves the creation and maintenance of the Settlement  
10 Website that shall include, at a minimum, downloadable copies of the Class  
11 Notice, Claim Form, and Settlement Agreement, and shall be maintained in  
12 accordance with terms of the Settlement Agreement.

13           15. The Court orders any members of the Settlement Class who wish to  
14 exclude themselves from the Settlement Class to submit appropriate, timely  
15 requests for exclusion in accordance with the procedures outlined in the Settlement  
16 Agreement and Class Notice, postmarked no later than November 13, 2017, and  
17 sent to the Settlement Administrator at the address on the Class Notice.

18           16. The Court orders that any member of the Settlement Class who does  
19 not submit a timely, written request for exclusion from the Settlement Class (*i.e.*,  
20 become an Opt-Out) on or before November 13, 2017, will be bound by all  
21 proceedings, orders, and judgments in the Litigation, even if such Settlement Class  
22 Member has previously initiated or subsequently initiates individual litigation or  
23 other proceedings encompassed by the Release (as set forth in Section VII  
24 Paragraphs D - F of the Settlement Agreement).

25           17. The Court orders any Settlement Class Member who does not become  
26 an Opt-Out and who wishes to object to the fairness, reasonableness, or adequacy  
27 of the Settlement Agreement to file with the Court and serve on Settlement Class  
28 Counsel and Pharmavite's Counsel no later than November 13, 2017, a statement

1 of the objection signed by the Settlement Class Member containing all of the  
2 following information:

- 3 a. The objector's full name, address, and telephone number;
- 4 b. If represented by an attorney, the attorney's full name, address,  
5 and telephone number;
- 6 c. A signed declaration that he or she is a member of the  
7 Settlement Class and purchased Covered Product(s);
- 8 d. A written statement of all grounds for the objection;
- 9 e. A statement of whether the objector intends to appear at the  
10 Fairness Hearing; and
- 11 f. If the objector intends to appear at the Fairness Hearing through  
12 counsel, the objection must also identify the attorney  
13 representing the objector who will appear at the Fairness  
14 Hearing.

15 18. The Court orders that any response to an objection shall be filed with  
16 the Court no later than November 27, 2017.

17 19. The Court orders that any Settlement Class Member who does not file  
18 a timely written objection to the settlement or who fails to otherwise comply with  
19 the requirements of Section VII Paragraph C of the Settlement Agreement shall be  
20 foreclosed from seeking any adjudication or review of the Settlement Agreement  
21 by appeal or by any other means.

22 20. The Court orders any attorney hired by a Settlement Class Member  
23 for the purpose of objecting to the proposed Settlement Agreement, the Attorneys'  
24 Fee Award, the Litigation Expense Reimbursement, or the Incentive Award and  
25 who intends to make an appearance at the Fairness Hearing to provide to the  
26 Settlement Administrator (who shall forward it to Settlement Class Counsel and  
27 Pharmavite's Counsel) and to file with the Clerk of the Court a notice of intention  
28

1 to appear no later than November 13, 2017. Counsel who do not adhere to these  
 2 requirements will not be heard at the Fairness Hearing.

3       21. The Court directs the Settlement Administrator to establish a post  
 4 office box in the name of the Settlement Administrator to be used for receiving  
 5 requests for exclusion, and any other communications, and providing that only the  
 6 Settlement Administrator, Settlement Class Counsel, Pharmavite's Counsel, the  
 7 Court, the Clerk of the Court and their designated agents shall have access to this  
 8 post office box, except as otherwise provided in the Settlement Agreement.

9       22. The Court directs that Settlement Class Counsel shall file their  
 10 applications for the Attorneys' Fee Award, Litigation Expense Reimbursement,  
 11 and Named Plaintiff's Incentive September 22, 2017, in accordance with the terms  
 12 set forth in Section VIII Paragraph R of the Settlement Agreement.

13       23. The Court orders the Settlement Administrator to provide the Opt-Out  
 14 List to Settlement Class Counsel and Pharmavite's Counsel no later than  
 15 November 20, 2017, and then file with the Court the Opt-Out List with an affidavit  
 16 attesting to the completeness and accuracy thereof no later than five (5) Days  
 17 thereafter or on such other date as the Parties may direct.

18       24. The Court preliminary enjoins all members of the Settlement Class  
 19 unless and until they have timely excluded themselves from the Settlement Class  
 20 from (i) filing, commencing, prosecuting, intervening in, or participating as  
 21 plaintiff, claimant, or class member in any other lawsuit or administrative,  
 22 regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to,  
 23 or arising out of the claims and causes of action or the facts and circumstances  
 24 giving rise to the Litigation and/or the Released Claims; (ii) filing, commencing, or  
 25 prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding  
 26 as a class action on behalf of any member of the Settlement Class who has not  
 27 timely excluded himself or herself (including by seeking to amend a pending  
 28 complaint to include class allegations or seeking class certification in a pending

1 action), based on, relating to, or arising out of the claims and causes of action or  
2 the facts and circumstances giving rise to the Litigation and/or the Released  
3 Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any  
4 lawsuit or administrative, regulatory, arbitration, or other proceeding based on,  
5 relating to, or arising out of the claims and causes of action or the facts and  
6 circumstances giving rise to the Litigation and/or the Released Claims. Any  
7 person or entity who knowingly violates such injunction shall pay the attorneys'  
8 fees and costs incurred by Pharmavite and/or any other Released Person and  
9 Settlement Class Counsel as a result of the violation. The Settlement Agreement is  
10 not intended to prevent members of the Settlement Class from participating in any  
11 action or investigation initiated by a state or federal agency.

12 25. The Court reserves the right to adjourn or continue the Fairness  
13 Hearing, or any further adjournment or continuance thereof, without further notice  
14 other than announcement at the Fairness Hearing or at any adjournment or  
15 continuance thereof, and to approve the Settlement with modifications, if any,  
16 consented to by the Settlement Class Counsel and Pharmavite's Counsel without  
17 further notice.

18 26. All pretrial proceedings in the Litigation are stayed and suspended  
19 until further order of this Court.

20 27. In the event that the Settlement Agreement is terminated pursuant to  
21 its terms or is not approved in all material respects by the Court, or such approval  
22 is reversed, vacated, or modified in any material respect by the Court or by any  
23 other court, the certification of the Settlement Class shall be deemed vacated, the  
24 Litigation shall proceed as if the Settlement Class had never been certified, and no  
25 reference to the Settlement Class, the Settlement Agreement, or any documents,  
26 communications, or negotiations related in any way thereto shall be made for any  
27 purpose in the Litigation or in any other action or proceeding, except as provided  
28 in Section X, Paragraph D of the Settlement Agreement.

1        28. Neither the Settlement Agreement, nor any of its provisions, nor any  
2 of the documents (including but not limited to drafts of the Settlement Agreement,  
3 this Preliminary Approval Order, or the Final Order and Judgment), negotiations,  
4 or proceedings relating in any way to the Settlement, shall be construed as or  
5 deemed to be evidence of an admission or concession by any person, including  
6 Pharmavite, and shall not be offered or received in evidence, or subject to  
7 discovery, in this or any other action or proceeding except in an action brought to  
8 enforce its terms or except as may be required by law or Court order.

10 | Dated: June 5, 2017

Christine A. Snyder

**Hon. Christina A. Snyder  
U.S. District Judge**